



MULTISTATE TAX COMMISSION

**Additional Drafter's Notes to Proposed Model
Finnigan Methodology Combined Reporting Statute**

The hearing officer recommended in his July 13, 2020 report that two additional drafter's notes should be included with the proposed model. Two proposed additional notes are set forth below:

Consolidated Filing election (note to Section 4)

DRAFTER'S NOTE: In addition to allowing an election to file a group return on a unitary domestic basis ("water's edge"), many states offer a group filing election based on inclusion in the taxpayer's federal consolidated return ("federal consolidated filing") or based on common ownership and control of domestic corporations ("affiliated group filing"). These filing methods have the advantage of eliminating controversy and uncertainty about the proper make-up of the filing group occasioned by the model's reliance on the unitary business principle. States must still establish policies and procedures for determining the group's income tax base, treatment of tax attributes and apportioning the tax base. Because the filing group may include the incomes, losses and apportionment factors of non-unitary entities, states should consider an explicit provision providing for the full apportionment of all of the group's income. The absence of a consolidated or affiliated group filing election in this model should not be construed as a rejection of either election as a policy matter.

Capital Loss Carryovers: (additions to current drafter's note to section 3.A.iv. highlighted in yellow):

[DRAFTER'S NOTE: The treatment of capital gains and losses in this model conforms generally to the treatment of such attributes under federal consolidated filing rules. If the state decouples from federal treatment of depreciation and tax basis and requires taxpayers to compute separate state amounts for capital gains, losses and/or loss carryovers, then insert language here referring to the section that instructs taxpayers how to report state-adjusted capital gains and losses.- If a state declines to follow the provisions of this section, it is recommended that language eliminating the use of capital loss carryforwards for entities joining the combined filing or leaving the combined filing group be inserted in its place.]